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# Supreme Court of the United States

OCTOBER TERM, 1943.

No. 589.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE  
COMMISSION, COASTAL TANK LINES, INC., ET AL., *Appel-*  
*lants,*

v.

MARSHALL TRANSPORT COMPANY, WARREN C. MARSHALL, RE-  
FINERS TRANSPORT TERMINAL CORPORATION, *Appellees.*

BRIEF IN BEHALF OF COASTAL TANK LINES, INC.,  
LEAMAN TRANSPORTATION COMPANY, PETRO-  
LEUM TRANSPORT COMPANY, SHIPLEY TRANS-  
FER COMPANY, VEDDER TRANSPORTATION  
COMPANY, M. I. O'BOYLE & SON, CLARE M. MAR-  
SHALL, WILLIAM F. CROSSETT AND RICHARD F.  
KLINE, APPELLANTS.

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The main purpose of this brief is to emphasize the few particular but important facts of record before the Commission pertinent to the question of law here presented. While the whole record of testimony before the Commission is before this Court only those portions of it have here been printed that are needed for this discussion.

**PARTICULAR FACTS.**

A Mr. Turner, and two associates, were the former owners of three small petroleum carrying motor truck companies in the Central West. Mr. Turner was the President. Between these gentlemen and the Union Tank Car Company negotiations arose and were concluded as a consequence of which the Union Tank Car Company "set up a corporation" for the purpose of acquiring the businesses of those former three small companies owned by Mr. Turner and his associates (Printed Record 45-46). It was contemplated that thereafter additional acquisitions of other petroleum carrying motor truck lines would occur (R. 14, 46).

The corporation so set up was given the name Refiners Transport and Terminal Corporation. In exchange for the ownership of the former three small companies Mr. Turner and his associates received some stock in Refiners Transport and Terminal Corporation and Union received all the remainder. Soon thereafter Union added to its commitment by putting in considerably larger sums of money and received additional stock of Refiners therefor. That finally brought its holdings to around 85 per cent of Refiners voting stock. New motor carrier acquisition commitments then were made in the name of Refiners, subject to the approval of the Interstate Commerce Commission, including the Marshall trucking company interests and various others, Union to furnish the necessary additional funds to be represented by increased stock of Refiners to be owned by Union. At the time of the hearing in this proceeding the whole program of intended acquisitions of motor carriers had not been completed, more being then contemplated (R. 46-54).

It therefore appeared of record to the Interstate Commerce Commission that Union Tank Car Company, one of the several very large operators of railroad tank cars for the

transportation of petroleum and its liquid products, in the manner stated, inaugurated a program of extensive engagement in the competitive business of motor tank truck transportation of petroleum and its liquid products from Eastern and Central Western refiners to consuming markets. For that purpose Refiners Transport and Terminal Corporation was "set up", Union Tank Car Company taking all the issued stock of Refiners except a small amount retained by Mr. Turner and his former associates who were to remain in the management as technically qualified men in the motor truck operating field.

The attempted Marshall acquisition took the form of an agreement to purchase assets consisting of good will, operating franchises, equipment and terminal properties; the same plan was employed with respect to several of the other attempted acquisitions governed by subsequent applications to the Interstate Commerce Commission. One, however, took the form of an agreement in the name of Refiners to purchase the stock of another tank truck motor carrier.

## II.

### ARGUMENT.

With those facts before it the Commission had a clear case in which Union Tank Car Company, claiming not to be a common carrier by railroad or "affiliated" with railroads in the statutory sense, is seeking to become largely dominant in the motor tank truck petroleum transporting field in an important area of the country. Whether the setting up of Refiners was or was not designed separately for the purpose it was urged before the Commission and is now urged before this Court the mere circumstance of its existence would absolve Union Tank Car Company from the need to be a party applicant and consequently from Commission regulation of its securities issues under Section 314, Title 49, U. S. Code, which applies to "corporations authorized by order of the Commission to acquire

control of two or more motor carriers". For the same reason it is further urged that Union Tank Car Company would be absolved from Commission regulation under Section 5(3) of U. S. Code, Title 49 concerning its reports and securities issues should this application only in the name of Refiners be proper. That paragraph of Section 5 applies to any person "which is not a carrier" but which may be authorized by order of the Commission to "acquire control of two or more carriers".

There is no need in the present case to explore all the remoter possibilities of the application of these provisions of the statute in other situations. It is enough that in the particular case now before this Court the facts of record before the Commission clearly made this present case one within the statute as to proper parties. This was no casual investment undertaken by Union Tank Car Company even if that would make any difference under the law. It is not a case calling for determination by the Commission or the Court whether a human being owning the majority of stock of a motor carrier must always be a party applicant in a proceeding in which that motor carrier seeks to acquire control of another motor carrier. It is instead a plain and clear case of the intentional invasion of the motor carrier tank truck field by Union Tank Car Company through the instrumentality of an intermediate corporation which it was responsible for bringing into existence and which except for a small amount of management shares Union Tank Car Company owns and completely dominates.

That presents in reality only one question here to be decided rather than two. *The one outstanding question is whether or not the word "control" as used in the statute embraces the purchase of operating franchises, good will, and equipment of a motor carrier with a view to its later extinction as a separate corporation, or whether it means only the purchase and continued ownership of stock.* It is believed that is the only important question presented for the reason that if it were to be agreed or determined that

the word "control" has the broader meaning, then beyond any serious doubt the statute would require Union Tank Car Company in the present case to be an applicant to the Commission and, if successful, make itself to that measure of regulation by the Commission which, as a non-carrier, it would be subjected to.

Congress contemplated that a non-carrier might undertake to acquire control of two or more motor carriers and made provision for it in the statute. It was declared in Section 5(2) (a) to be lawful, with the approval and authorization of the Commission—

"for a person which is not a carrier to acquire control of two or more carriers through ownership of their stock *or otherwise*; or for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock *or otherwise*". (Italics supplied.)

In that event the statute goes on to provide in Section 5(2)(b) that whenever such a transaction is proposed under sub-paragraph (a) the carrier or carriers "or persons seeking authority therefor" shall present an application to the Commission, etc.

In short, if the real party in interest is a non-carrier which, already controlling one carrier, desires to acquire another, the non-carrier is required to make an application to the Commission and if successful to subject itself to the required degrees of Commission regulation as if a "holding company" under Sections 5(2)(b) and 314 of U. S. Code, Title 49.

Those matters being clear the case turns, as stated, upon the conception of "control" as used in the statute because here the form of the proposed transaction with Marshall was not the acquisition of its stock but the purchase of the operating franchises, good will, equipment, and terminal properties.

Before the Commission and in the court below counsel for the appellees stressed that Section 5(2)(a) not only

authorizes a non-carrier to acquire control of two or more motor carriers "through purchase of stock or otherwise" but also authorizes a carrier (whether rail, water, or motor) to "purchase \* \* \* the properties" of another motor carrier. The argument appears to be that since here Refiners (a carrier) proposes to purchase the Marshall "properties" the case cannot be one in which Union is undertaking to acquire "control" of the Marshall corporation because no purchase of Marshall stock is intended.

But in its entirety the argument assumes that if the case happens to fit the description of two things which Congress has authorized upon Commission approval then only that one of the two authorizations is applicable which suits the convenience of Union Tank Car Company to be absolved from the need to be a party applicant and subject itself to holding company regulation by the Commission.

That the word "control" as defined by Congress includes the purchase of operating franchises, good will, terminal and equipment properties of motor carriers is not very difficult to conclude. Thus to begin with Section 5(2)(a) itself authorizes such control "through ownership of stock or otherwise". While the words "or otherwise" are an addition to the statute as previously passed the change only made that particular paragraph consistent with other paragraphs of Section 5 previously enacted and having the same purpose and effect. Thus the prohibition part of Section 5, found in paragraph 4, previously made and still makes it unlawful to enter into any transaction as described in Section 5(3) (without Commission approval)—

*"or to accomplish or effectuate, or to participate in accomplishing or effectuating, the control or management in a common interest of any two or more carriers, however such result is attained, whether directly or indirectly, by use of common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any other manner whatsoever."* (Italics supplied.)

Further to fortify its broad intent Congress provided in Section 1(3)(b) that—

“For the purposes of sections 5 \* \* \*, where reference is made to control (in referring to a relationship between any person or persons and another person or persons), such reference shall be construed to include actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation, through or by common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies, or *through or by any other direct or indirect means*”; (Italics supplied.)

As here pointed out by the Commission, motor carriers, in their present stage of development, are relatively small enterprises. They do not as a rule have securities floating around in the hands of an investing public. Instead they are owned by only one or several people. Their capitalization is nominal. Their properties consist mostly of good will, their operating franchises derived from the Commission, their truck equipment, their spare parts of supplies, and their rented, or in some few instances owned, terminals. Congress had in view an important public policy in encouraging the lessening of the large number of these individual motor carriers through consolidation and other forms of integration into larger systems. (*McLean Trucking Co. v. U. S.*, No. 31, decided by this Court January 17, 1944.) It did not completely discourage accomplishment of that important national policy by disallowing non-carriers to acquire two or more motor carriers. But it did interpose important safeguards in those events. Congress chose to subject those non-carriers to a certain quantity of Commission regulation deemed important in the public interest whenever non-carriers may come forward with some plan to acquire two or more motor carriers. It said that if a non-carrier so be “authorized by order” to acquire control of two or more motor carriers if (the non-carrier) must be

subjected to a described measure of commission regulations.

That salient purpose could hardly have been intended by Congress to lend itself to very easy circumvention through the mere choice to purchase operating franchises, good will and properties rather than stock. Many motor carriers are not even incorporated, so in those instances there would even be no stock to be purchased.

As held by this court in *Rochester Tel. Corp. v. U. S.*, 307 U. S. 125, the word "control" is to be broadly construed and has no technical meaning. The Congressional intent is to be gathered from the environment and amplifying words which the particular legislation may contain. Thus while in *Federal Trade Commission v. Western Michigan Company*, 272 U. S. 555, dealing with the Clayton Act, the word "control" as there used was given a narrow meaning, there were no amplifying and broad terms of definition by Congress such as are here to be found in the Interstate Commerce Act. This emphasis upon the significance of the sweeping terms in which Congress here defined its meaning in using the word "control" is further deserved by the decision in *Gulf Refining Company v. Fox*, 11 Fed. Supp. 425, 430.

So then the case somewhat quickly narrows down to this: Congress authorized, with Commission approval, one motor carrier to purchase the "properties" of another. Also it authorized a non-carrier to acquire "control" of two or more motor carriers either directly or indirectly, by any manner or means whatsoever, either through acquisition of stock "or otherwise". Here the transaction which Union Tank Car Company has attempted most certainly fits the latter description. If it also fits the former as one in which seemingly an existing carrier seeks to purchase the property of another that does not lessen the circumstance

that at one and the same time and by the same means Union Tank Car Company is undertaking to acquire control of the Marshall and other motor carriers. It must, therefore, as the real person in interest, be the "applicant."

To accept the argument of appellees and the majority of the court below would seemingly mean that in the entire field of motor carrier acquisitions non-carriers may escape all Commission regulation of themselves by the simple expedient of setting up an intermediate and virtually wholly owned new corporation first to purchase one motor carrier and then in its name to apply for authority to purchase the properties of an indefinite number of others. Congress could hardly have intended that easy means of escape.

The two dissenting members of the Commission appear to be much concerned that if their majority brethren were here to be upheld by this Court then that in principle it would always be necessary for the individual owner of the majority stock of a motor carrier to be a party applicant when that motor carrier seeks to acquire control of another either through purchase of stock "or otherwise". But that cannot be so because Congress had no purpose to regulate mere individuals who are majority stockholders of existing motor carriers. Nor because ultimately Mr. John D. Rockefeller may own a practical controlling interest in Union Tank Car Company should the dissenting minority of the Commission be apprehensive that in principle a decision adverse to them in this case would make it necessary that Mr. Rockefeller be a party applicant. Congress did not intend that the statute should be pushed to such far-fetched and unrequired extremes.

In any event it is enough that in the present particular case under its own particular facts the situation is clearly one in which the full Commission majority was right.

**CONCLUSION.**

• It is respectfully urged that the decision and order of the majority of the court below be reversed and that it be directed to enter an order dismissing the suit.

Respectfully submitted,

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